

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 139 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DIPSINH KODARSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR G RAMAKRISHNAN for Appellant
MR AJ DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.C.PATEL

Date of decision: 13/08/2003

ORAL JUDGEMENT

1. The appellant was the accused no.1 in Sessions Case No.157 of 1993 before the Additional Sessions Judge, Sabarkantha, Himatnagar who, by his judgment and order dated 20th January, 1995, convicted the appellant of the offence under Section 302 and sentenced him to life imprisonment and to pay a fine of Rs.500/-. The accused no.2 Dilipsinh Sartansinh was acquitted.

2. The appellant has, therefore, filed this appeal challenging the said order of conviction and sentence. The State has not filed any appeal challenging the acquittal of accused no.2.

3. The charge against the accused was that the accused no.2 gave a fist blow on the face of the deceased Marubhai Dhulabhai and the accused no.1 gave a knife blow on the right abdomen, in furtherance of their common intention to cause his death. The incident occurred at about 6 o'clock in the evening on 18th July, 1993 in Mataji's chowk in village Vadhpur, Taluka Prantij. It was alleged that Manubhai, the son of the deceased had previously beaten Vadhsinh, the brother of accused no.1 and, in order to take revenge, the accused caused the death of Marubhai, the father of Manubhai.

4. The background of the prosecution evidence is to be found in the evidence of Manubhai Marubhai (p.w.3), the son of Marubhai who was killed in the incident. According to him, on 18th July, 1993, he and his wife Kailasben were travelling in the S.T. bus to go from Vadhpur to the Government Hospital at Prantij. They boarded the bus at 9 o'clock in the morning. While they were sitting in the bus, Vadhsinh also came in and occupied the opposite seat and after the bus started for Prantij, Vadhsinh caught the hand of his wife and placed it on her knee. Manubhai got angry. His wife also got up and occupied another seat. Manubhai did not say anything in the bus but after they got down at Prantij, he hurriedly went to the market and bought a stick. He came back near the Ambaji Mataji's chowk where Vadhsinh and two or three other persons were standing. He gave a stick blow on the head of Vadhsinh. Then, he went to the bus stand on the highway and left for Virawada since he apprehended that he too would be beaten.

5. According to Sitaben (p.w.6), who was the daughter of Marubhai, Jayantibhai, who had gone to the hospital at Prantij with Manubhai and his wife, came at 11 o'clock and said that Manubhai had given a stick blow

to Vadhsinh. At about 2 o'clock in the afternoon, Dipsinh, the accused no.1 came and said that he would either kill Manu or Maru and then he went home.

6. According to the prosecution case, there were two eye-witnesses. One is Gangabhai Jitabhai (p.w.1). He is the nephew of Marubhai. According to him, he had gone to Mataji's chowk to buy bidis. He saw his uncle Marubhai there. Just then, both the accused came there. They were Dilipsinh and Dipsinh. The accused no.2 gave a fist blow on the chest of Marubhai and then Dipsinh, the accused no.1 gave a knife blow on the right abdomen. Gangabhai ran back to his home and informed other people. Maru's wife Kakiben, Lila Kachra, Shankar Dhula, Kesha Vira and Dama Manga came there. Then they took Marubhai in a rickshaw to Government Hospital at Prantij. Maru had already died before they arrived at the hospital. He then went to the police station to lodge a complaint. The police recorded his complaint (Exh.28) at 8.10 p.m. The witness was cross-examined at length. Nothing of importance was elicited except the omission of the name of accused no.2 in the complaint. His explanation was that he was scared and omitted to mention his name by inadvertence. He denied the suggestion that Marubhai had died because he had fallen on a 'khila' which caused an injury in the abdomen.

7. The other eye-witness is Lakhaji Shankaji (p.w.2). He has also more or less given the same version of the incident as Gangabhai. In cross-examination, he said that there was a quarrel and both the accused were shouting and Marubhai was pleading that he was not at fault. The accused were giving abuses. He also denied the suggestion that Marubhai died because he fell on a "khila" and got an injury in the stomach.

8. According to panch witness Dahyabhai Hirabhai (p.w.5), the accused led them to a place behind his house and dug out, from there, a knife which was blood-stained. The F.S.L. report shows that it was found to have been stained with blood of the same group as that found on the clothes of the deceased.

9. The post-mortem was carried out by Dr. Arunsinh Bhati (p.w.4). He noted the following external injuries in Column no.17 of the post-mortem report (Exh.12):

- (1) Penetrating wound size 4.0 c.m. x 10 c.m. x Liver right lobe posterior side, deep. present obliquely on the right hypochondriac region 10.00 c.m. below

the right nipple and on nipple line
(Skin, Muscles, peritoneal wall & Right
lobe of Liver lower part pierced).

On Liver right side of Lobe lower part
injury size 4.0 c.m. x 0.7 c.m. x
completely liver pierced posteriorly

Adhered blood present around the injury
on chest wall and abdomen.

According to him, the death was because of shock due to haemorrhage. He also said that the injury was sufficient to cause death in the ordinary course of nature and that it could have been caused by the muddamal knife which was shown to him. In cross-examination, he did not agree with the suggestion that the injury in question could have been caused by the 'khila' which was shown to him.

10. Thus, the medical evidence clearly establishes that Marubhai's death was homicidal. There is no reason to disbelieve the evidence of the two eye-witnesses who have described the incident naturally as it occurred and nothing has been brought out in the cross-examination to shake their testimony. That there was an incident in the morning between Manubhai, the son of the deceased and Vadhsinh, brother of Dipsinh is also not disputed. The learned Additional Sessions Judge has given benefit of the doubt to Dilipsinh, the accused no.2 and since there is no appeal against his acquittal, nothing further need be said about his acquittal. However, the prosecution has proved beyond reasonable doubt that it was the accused no.1 who gave the knife blow on the right abdomen of Marubhai who immediately succumbed to the said injury. The only submission made by the learned counsel for the appellant is that, admittedly, there was a previous incident between Manubhai and Vadhsinh and the appellant only intended to teach a lesson to the deceased and he had no intention to kill him. He, therefore, submitted that the offence would fall under Section 304 Part II of the Indian Penal Code. However, we find ourselves unable to agree with the submission. The first incident occurred in the morning. It was obvious that the appellant meditated revenge and he had also told Sitaben, the daughter of the deceased at about 2 o'clock in the afternoon that he would either kill Manubhai or Marubhai. He then came back in the evening at about 6.30 and gave a fatal blow with a fish-shaped knife in the right abdomen. In the circumstances of the case, there is no escape from the conclusion that he intended to cause the very injury which was sustained by the deceased and that it was not

accidental or unintended. The injury was also sufficient to cause death in the ordinary course of nature. There are no circumstances on record which would bring the case under any of the exceptions to Section 300 of the I.P.C. It cannot be said that the incident occurred in the heat of the moment or on any provocation given by the deceased. The learned Additional Sessions Judge, therefore, rightly convicted the appellant of the offence under Section 302 of the I.P.C.

11. Thus, there is no substance in the appeal and the same is dismissed.

(N.G. Nandi, J.)

(M.C. Patel, J.)

hki